Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States

N.E., as biological father of E.D.L., a minor,

Petitioner,

vs.

CINDY J. HEDGES, BRIAN HEDGES, and JAMES C. MONK in his official capacity as county attorney for CARROLL COUNTY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a male parent has a substantive Due Process right to procreational autonomy under the Fourteenth Amendment when his wishes differ from the wishes of a female with whom he has unwillingly conceived a fetus.

2. Whether the petitioner should be allowed to bring an unpopular view to court and request expansion of existing constitutional doctrines without being punished and sanctioned for his "novel" theory.

PARTIES TO THE PROCEEDING

Petitioner is N.E. as biological father of E.D.L., a minor. N.E. is an attorney and professor of Constitutional Law appearing *pro se*. Respondents are Cindy J. Hedges (E.D.L.'s biological mother), Brian Hedges (E.D.L.'s stepfather by virtue of his marriage to Cindy J. Hedges), and James C. Monk (the county attorney for Carroll County, Kentucky acting in his official capacity).

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PETITION FOR WRIT OF CERTIORARI

N.E. as biological father of E.D.L., a minor, by counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

I.
OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit (App. B1) has been published at *N.E. v. Hedges*, 391 F.3d 832 (6th Cir. 2004). The opinion of the district court dismissing this case (App. D1) and the opinion of the district court awarding attorneys' fees to respondents (App. C1) are unpublished.

II.
JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered December 20, 2004. A petition for rehearing *en banc* was denied on March 14, 2005. (App. A1). The jurisdiction of this Court is invoked under 28

U.S.C. §1254(1).

III.
STATUTORY PROVISIONS INVOLVED

The text of the Due Process clause of the Fourteenth Amendment is set forth at App. E1. Ky. Rev. Stat. 199.480 ("Parties defendant in an adoption proceeding") is set forth at App. F1. Ky. Rev. Stat. 405.020 ("De facto custodian") is set forth at App. G1. Ky. Rev. Stat. 405.430 ("Paternity") is set forth at App. H1.

IV.
STATEMENT OF THE CASE

During the Spring of 1993, petitioner N.E. and respondent Cindy (Lewis) Hedges were involved in a sexual relationship in Indiana during which minor child E.D.L. was conceived. At all times during the course of their relationship, Ms. Hedges advised and assured petitioner that she was taking oral contraceptives regularly.

During May of 1993, Ms. Hedges discovered that she was pregnant. Ms. Hedges intentionally withheld this information from petitioner, and she immediately moved to

Kentucky without notice to petitioner. Thereafter, Ms. Hedges made no effort at communication or contact with petitioner for more than one year.

In July of 1994, Ms. Hedges telephoned petitioner and divulged that in fact she had *not* taken oral contraceptives regularly during the course of their relationship, that petitioner was the biological father of E.D.L. (age seven months), that Ms. Hedges was engaged to be married and had no intention of relocating to Indiana, and that her new husband, respondent Brian Hedges, was to adopt E.D.L. Based upon these representations, petitioner and Mrs. Hedges mutually agreed that it would be in minor E.D.L.'s best interests for the child to never learn of his biological father, for petitioner to eschew custody, parenting time, or any meaningful relationship with E.D.L., and for Brian Hedges to adopt E.D.L.

Over the next seven years, Mrs. Hedges and petitioner had almost no contact.

On May 1, 2001, Mrs. Hedges and the county attorney for Carroll County, Kentucky initiated a paternity/child support action against petitioner; that same month, Mrs. Hedges divulged petitioner's existence to E.D.L. (then age seven years) for the first time. On July 3, 2002, the Carroll County District Court entered an order of

paternity against petitioner, and on July 31, 2002, the Carroll District Court entered a retroactive support order which instantly placed petitioner nearly $13,000 in arrears.

A. Federal District Court Proceedings

Petitioner filed this 42 U.S.C. §1983 action against Cindy Hedges, Brian Hedges, and the county attorney for Carroll County on April 21, 2003. The jurisdiction of the district court was invoked under 28 U.S.C. §1343(a)(3) as well as on the basis of diversity with the matter in controversy exceeding the sum specified by 28 U.S.C. §1332.

Therein, petitioner alleged that Cindy Hedges fraudulently induced petitioner into conceiving minor E.D.L. and that defendant Brian Hedges had refused to formally adopt E.D.L. so as to maximize the financial gain to him and his wife from Kentucky's child support laws. Under these facts, petitioner argued that the automatic attachment of financial liability on a biological father upon a finding of paternity under Kentucky Revised Statutes 405.00 *et seq.* and 406.00 *et seq* violates petitioner's substantive due process rights and equal protection rights under the 14th Amendment to the U.S. Constitution.

In its December 5, 2003 "Memorandum Opinion and

Order," the District Court for the Eastern District of Kentucky dismissed the case, holding that petitioner could not state a claim for violation of his substantive due process rights and equal protection rights. (App. D22-D30).

The following month, the District Court awarded attorneys' fees to the respondents upon its finding that the current cause of action is "frivolous, unreasonable, and without foundation." (App. C2-C4).

B. Sixth Circuit Proceedings

Petitioner appealed to the United States Court of Appeals for the Sixth Circuit. Petitioner argued that a parent – whether a man or a woman – enjoys a substantive Due Process right to privacy when making decisions regarding procreation and parenthood. Petitioner further argued that Kentucky's paternity statutes, child support laws, and adoption/termination of rights statutes impose fatherhood on unwilling males while affording the biological mother multiple avenues by which to waive her parental rights and responsibilities after conception.

By panel decision issued December 20, 2004, the Court of Appeals described the issues differently. Rather than spend any time on whether procreational privacy is a